

Divorce Once Again

Congress, perhaps a little too eager to put its fingers into everything, has placed under consideration a bill on absolute divorce. House Bill 6456 seeks to introduce absolute divorce in the Philippines as "an imperative necessity when the marriage has irretrievably broken down". This latest bill is just a carbon copy of Parliamentary Bill 223 filed in 1978 in the defunct Batasan Pambansa which never passed the introductory stage.

Existing laws allow legal separation or relative divorce without the right to remarry. House Bill 6456, while not repealing such law, would allow also the option of filing an action for absolute divorce, but only on the grounds of adultery or concubinage, of an attempt on the life of either spouse and of incompatibility.

By legal separation, the spouses still remain bound and married to each other, but in case of an absolute divorce the marriage bond would be dissolved so that the parties could marry again.

HOUSE BILL 6456 AT A GLANCE

The incidence of broken marriage is steadily increasing not only in the Philippines but worldwide. Marriage is in real trouble, and so is the family. Doubtless something must be done with urgency to arrest this social malady and to help victims of im-

possible marriages as well as their families and especially their children. But is absolute divorce the appropriate remedy? Specifically, will House Bill 6456 provide an effective solution to marriage problems in our midst?

1. *The Internal Logic of Divorce*

Divorce strikes at the very heart and core of marriage, its exclusiveness and permanence. Hence the severance of the marriage bond will wreak havoc on the family institution and lead to social chaos.

The proponents of the new divorce draft, however, try to allay fears and assure all and sundry that such thing will never happen if and when the new bill shall become a law. They contend that the proposed grounds for divorce are still quite "strict" vis-a-vis the grounds in other countries where absolute divorce is allowed. This is supposed to mean that even if Bill 6456 is ever enacted into law, it will not open the doors wide, but just a little to allow absolute divorce in a few cases or instances determined by law.

Obviously such can not be the case, for legalized divorce has a built-in tendency to spread itself out as the following arguments will show:

a) It is obvious that the mere knowledge that the marriage bond can be broken or terminated through divorce causes man and woman to act with laxity towards marriage itself. The young especially, seeing that they can break the marriage bond almost at will, will not hesitate to enter hastily into a marriage covenant which, if not found to be satisfactory, may be ended in a few years or even months. As a result thereof, marriage will degenerate into an experiment instead of being the most serious and stable affair in life. Thus the mere possibility of divorce will not only pave the way to actual divorce, but will also weaken the marriage institution at its roots even before it is entered into.

b) It is a well-known fact that a marriage, to be successful, demands mutual understanding and adaptation. Differences of temperament and judgement are bound to occur even between the

most congenial companions. An effort or attempt to reach a satisfactory compromise and mutual accommodation will ordinarily be made by spouses when they realize that marriage is a lifelong union. However, when marriage is regarded as a temporary alliance, temperamental differences and even common misunderstandings will not be taken seriously and will certainly widen gradually the breach until divorce comes to shatter the marital bond and to wreck the family. So, even after marriage, divorce is the greatest cause of divorce. Instead of being a remedy, divorce becomes a much more serious malady. It poses a much greater evil than that it seeks to cure.

c) When the law itself makes distinctions and sets up different classes among married couples, favoring some with the right to sue for divorce while denying the same right to others in similar straits, can anyone seriously believe that the unfavoured ones will not clamour and agitate for a change in the law that will allow them too the same access to divorce? How can the law credibly tell me to stay unhappily put with my partner while it allows my neighbour to divorce his or hers? Indeed, nothing succeeds in breeding more divorce than divorce. That is why divorced persons keep changing partners as bad money keeps changing hands.

Hence, before asking whether absolute divorce should be legalized in the country, as is proposed in House Bill 6456, we should first ask ourselves whether we want marriage itself, that is, that stable marriage which is the keystone of a stable family and of a healthful society.

2. *A Case of Legal Discrimination and Inconsistency*

Any divorce law which singles out certain causes for divorce and rules out others is perforce discriminatory. Such is the case with House Bill 6456 for it seeks to grant a second chance at happiness to spouses rendered miserable because of their partners' adultery or concubinage, or an attempt on their lives, or because of incompatibility.

What about other spouses rendered miserable, too, because of their partners' habitual drunkenness or drug addiction, abandon-

ment or desertion, conviction of a felony or crime, non-support, wilful neglect, idiocy or insanity and many other causes, who are denied another chance at happiness and are condemned to sink deeper in their misery?

In other words, if and when the divorce draft should ever become a law, some unhappy spouses will be allowed to seek happiness in a new partnership, while many others must stay put in their misery and plight. This is discrimination pure and simple which is inherent to any divorce system. It is only the "no-fault" divorce arrangement which can offer all distressed spouses equal chances to second marriages. But a divorce law without controls is inconsistent with the restrictive nature and objectives of House Bill 6456.

Allowing divorce, it is argued, it is a lesser evil than tolerating illicit relationships. Now, H.B. 6456 attempts or aims at getting rid of adultery and concubinage through legalized divorce. But why in the process subvert marriage and the family? Why should the institution of marriage become the victim? After all, marriage is not the cause of the existing promiscuity in our society, the real cause being the moral weakness of the spouses themselves. Such being the case, neither adultery nor concubinage will be rooted out from our midst through the legalization of divorce, because personal faults, if not properly cured, will be carried over to the second and even subsequent marriages to wreck them.

It can not be gainsaid that adultery and concubinage are epidemic problems of a permissive society. The remedy to these social maladies is not divorce but a moral regeneration of our community and the enforcement of existing laws penalizing marital infidelity.

ALTERNATIVES TO DIVORCE

The absolute divorce controversy was theoretically set to rest with the overwhelming ratification by the Filipino people of the 1986 Constitution which provides: "marriage is an inviolable social institution". The state is further mandated "to protect marriage as the foundation of the family and the nation".

The new Family Code, too, reaffirms the traditional concept of marriage, and, premissing on the constitutional no-divorce principle, upholds the marriage institution as inviolable. So absolute divorce is, at least for the time being, a purely academic question.

But what is to be done with the many marriages which have irretrievably broken down? Inasmuch as absolute divorce with the option to remarry is not possible under existing laws, what other options are available to Filipino citizens who are victims of the so-called impossible marriages?

The Family Code proposes the following alternatives to absolute divorce:

1. *Preventive Measures Against Divorce*

Admittedly marriage is unsafe at any speed. Therefore, safety measures must be set up to preserve its unity and stability. This is especially true in cases of minors. Indeed statistics and experience show a marked correlation worldwide between youthful marriages and broken homes. In the Philippines the low age factor has been singled out by the Catholic bishops as one of the main causes of marital instability.

The Family Code, cognizant of the real facts, has introduced some positive measures to prevent minors and immature persons from risky unions even if they have already reached the legal age for marriage.

a) *The New Law on Minors:*

Any male or female below eighteen years of age can not validly marry even with the consent of parents or guardians (FC, a.35,1).

Persons between the ages of eighteen and twenty one need parental consent (a. 14). Their marriage is 'voidable', this is, it may be annulled by any competent court when such consent was wanting (a.45,(1)).

Furthermore, minors need marriage counselling whenever parental consent or advice -up to twenty five years of age- is re-

quired by law. Both parties are bound by the counselling proviso of the law even if only one is underage for this purpose. If a certificate to the effect that the contracting parties have undergone marriage counselling can not be produced, the issuance of the marriage license is to be suspended for three months (a.16).

b) *The solemnizing officer:*

Another salient point of the new law has to do with the person and qualifications of the officer who solemnizes the marriage. Under the law no marriage is recognized as valid unless the consent is freely given in the presence of a qualified minister (a.2 (2)).

This legal provision, however, has not always been properly implemented. We all are aware of the frequent abuses being committed within the premisses of city and town halls by fake or irresponsible officers who for a fee expedite the so-called 'quickie' marriages specially for the young and immature.

Fortunately, however, city and town mayors no longer qualify under the new law to solemnize marriages, a task now reserved to incumbent members of the judiciary and to duly authorized and registered priests and ministers of any religion or sect. Furthermore, the officiating priest or minister must first assure himself that at least one of the contracting parties belongs to his church or sect (a.7).

Doubtless, strict compliance with these new preventive measures will greatly reduce the number of impossible marriages.

2. *Liberalization and Expansion of Annulment Grounds*

The Family Code widens in scope the existing annulment provisions and introduces new, invalidating grounds which may be of help in ending unhappy marriages without fostering the divorce mentality, to wit:

a) *Fraud or Deceit*

Under the law, fraud makes a marriage 'voidable', this is, it may be annulled when the consent of either party was obtained

by concealment of certain facts or circumstances determined by law. The victim, however, upon the discovery of the defect, could heal or sanate the fraudulent union through voluntary cohabitation.

Misrepresentation as to the identities of one of the contracting parties no longer renders the marriage voidable. The freedom and direct communication that characterize today's system of courtship hardly justify the retention of the old legal provision.

Non-disclosure of a previous conviction by final judgment of a crime involving moral turpitude, say, rape, theft, estafa . . . , and concealment by the wife that, at the time of marriage, she was pregnant by a man other than her husband, still constitute grounds for annulment.

Moreover, concealment of a sexually transmissible disease regardless of its nature such as syphilis, AIDS, etc., and of drug addiction, habitual alcoholism, homosexuality or lesbianism existing at the time of marriage, constitute fraud and give ground for action for the annulment of the union.

These latest additions to the list of voidable marriages open the door to new and significant grounds for annulment. The innocent spouse who feels defrauded upon discovery of the truth can now invoke the law and assuage his or her grief by obtaining in the civil court a marriage annulment against a homosexual, habitual alcoholic, drug addict or the carrier of a transmissible venereal disease.

While this is a marked improvement over the old law, it is, however, regrettable to note that the new Family Code still adheres to the old concept of fraud, and thus, effective concealment or misrepresentation as to character, health, rank or chastity does not constitute fraud and can not be adduced for action toward the annulment of marriage (a.46,4).

It is true that such qualities do not usually affect the essence of the conjugal partnership. However, these so-called 'incidental' qualities are oftentimes the direct cause of the marital consent, the basic requisite for a valid marriage. In such cases, fraudulent representation or concealment as to the virginity, health,

wealth and the like of a given person could be a sufficient ground for annulment. After all, deceit was coolly and effectively used to seduce the partner into the marital union.

b) *Undue Influence:*

The relevance of this new annulment ground can not be overestimated. Every year scores of marriages fail due to the fact that the party or parties enter into the conjugal partnership under the undue influence of parents or other persons in authority, though short of force or intimidation.

There is undue influence when a person takes improper advantage of his power over the will of another depriving the latter of a reasonable freedom of choice. To determine the degree of influence the sex, age and condition of the person must be borne in mind.

The doctrine of undue influence, which is enforced in other contractual affairs, has now been extended to the marriage contract. This is as it should be, for reverential fear of parents or persons in authority can bear upon or induce a boy or a girl into an unwanted union.

A young girl, for instance, may be pushed into marrying a man just because her parents want her to do so. They may not use force to make her yield to their wish, but under the veiled threat of losing their love and protection, of being disowned or driven from home etc., the daughter out of love and reverence for her parents may consent to marry the man she neither loves nor likes. Such a marriage is a voidable alliance and may now be annulled even if no force or intimidation was used to obtain consent.

c) *Psychological Incapacity:*

Without the least doubt, psychological incapacity is the most salient feature of the new legislation and a broad and promising ground of marriage nullity.

Psychological incapacity refers directly to the inability to comply with essential marital duties. Indirectly it means the lack of intellectual awareness and volitional maturity.

Marital consent, of course, can not exist when either party fails to know the natural structure of marriage or to understand the essential right and duties to be mutually given and accepted. This means that both a conceptual knowledge and evaluative or critical understanding are necessary prerequisites for the valid consent which gives birth to the contract and to the marriage partnership.

But it is one thing to *know* and to *will* the conjugal partnership, and it is quite another to be radically fit to assume seriously the marital duties and responsibilities and to honor the commitments resulting therefrom.

An innate homosexual or lesbian, a drug addict, a compulsive gambler, a sociopath or the like may be fully aware of what marriage is all about and even may freely choose such a state of life, and yet he or she might be unable to assume and discharge the basic responsibilities attendant there to.

Marriage is conceived as "a permanent partnership between a man and a woman to establish conjugal and family life" (a.1). In this partnership the spouses are required to relate to and understand each other. If this kind of interaction was never possible between the parties, then, what existed between them was merely a sort of alliance, never a partnership. Their union, therefore, was null and void from the start.

Again, by its very nature the conjugal partnership tends to perpetuity for the sake of the children and of the family. Hence a valid marriage is impossible for one who firmly nurtures a divorce mentality or who has the intention of positively excluding progeny.

Psychological incapacity as a cause of nullity must be grave and antecedent to the marriage itself.

THE UNFINISHED TASK

The Family Code has, no doubt, introduced significant changes into the marriage law, enough perhaps to render the new divorce proposal unnecessary at the moment. The rigidity of the old law has been tempered with new, liberal provisions with a view to

facilitating the resolution of marriage cases truly deserving of legal action in equity and justice. The grounds for nullity, annulment and legal separation have been expanded by adopting some of the latest findings of the behavioral and sociological sciences.

But can the work so far accomplished sufficiently silence the divorce advocates? Not likely, unless the unfinished parts of the task be first completed, to wit:

1. The state has yet to elaborate a Family Code based more on the natural and contractual angles of the marital institution. Setting aside the purely religious and sacramental aspects of marriage, which are the exclusive competence of the church, the state could adopt new legal provisions basically emanating from natural law which is the patrimony of both the state and the church.

2. The findings of behavioral sciences in matters relative to nullity grounds have been truly revealing and extensive. The state can not and should not neglect the genuine progress of science affecting juridical matters for the sole reason that it is something new or alien to local customs and practice.

3. The recognition of church's annulments by the state will surely help distressed spouses and will lessen caseloads in civil courts involving annulment and dissolution of civil marriages already declared null in a church tribunal.

At present, spouses, already relieved of their marital vows by judicial action of their church, are still not allowed to remarry and could be prosecuted for bigamy or adultery rendering such annulment decisions by the church virtually useless.

It is rather illogical and inconsistent for the state, which recognizes a valid marriage solemnized in accordance with the laws of a duly registered church or religious sect, not to accept nullity or annulment cases granted by the same church or sect pursuant to its own laws.

Furthermore, the state which recognizes Moslem divorces granted in accordance with Moslem laws, can not, under the principle of equality before the law, interpose a valid objection to the

legalization of annulments and or dissolutions approved or declared by any duly recognized church or religious sect.

State recognition of such annulments, however, should not be automatic, not just limited to the acceptance and registration of decisions in the civil registry by the head of an established church or religious sect. Instead, enough guarantees should be provided to prevent opening the floodgates to the wholesale dissolution of marriages.

In principle, only marriage annulments granted by the church or sect in which the marriages were solemnized should be recognized by the state. This will prevent the parties from shifting religious affiliation just to obtain an easy or quick divorce.

Moreover, before final recognition is extended, the state should review each annulment case to prevent collusion, suppression or fabrication of evidence and to make sure that the judicial sentence has been rendered and issued pursuant to the laws of the respective church or sect.

4. For purposes of facilitating the solution of marriage conflicts, the state should establish matrimonial courts—as it has already done for agrarian, labor and juvenile cases or problems—to handle exclusively marriage cases. This would greatly help in the training of court personnel and in the enrichment and development of a progressive jurisprudence on marriage. If the country's marriage crisis is serious enough to warrant the filing of a divorce law in Congress, then there should be no argument against the creation of such matrimonial courts to handle or rationalize said crisis.

A TEST OF FAITH

Absolute divorce is certainly not in consonance with the customs, traditions and culture of the Filipino people. Hence no divorce proposal can be expected to prosper in the country for the time being. Yet divorce will remain a nagging and highly emotional issue.

The lack of a divorce mentality, however, is no guarantee that divorce will not be institutionalized in this country in the near or distant future, as it has already happened in other traditionally Catholic countries like Italy, Spain, Brazil.

In a pluralistic society important issues are often decided by a showing of hands and not necessarily through adherence to moral tenets and values. The opinion of the majority simply sets the rule or law, and then whatever conforms to the law is considered as legal and good for the country and its citizens. Thus if gambling is legalized, then it is right for the citizen to gamble; if adultery, concubinage, graft and corruption are sanctioned by law, then sexual permissiveness and promiscuity and stealing the people's money will become a part of the law of the land; so when and if divorce is legalized someday, not even God can stop it if you choose to have it.

Genuine Christians, however, should not be overdisturbed by the possibility of enactment of a divorce law in the country. If it be the will of Congress and of the people that there be divorce in the Philippines, let it be. But this should not be a nightmare to the true Christian but rather a test of faith. His task must then be to prove the strength of his faith in God Who says that marriage is the symbol of His love for His people and that it is as permanent as that love.

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